

*In the Matter of Joseph Salanitro, Correction Sergeant (PS5613I and PS1818I),
Department of Corrections
CSC Docket No. 2011-4750
(Civil Service Commission, decided March 7, 2012)*

Joseph Salanitro requests that the eligible list for Correction Sergeant (PS5613I), Department of Corrections, be revived so that his name may be certified to the appointing authority. He also requests that he be provided with a retest for Correction Sergeant (PS5613I and PS1818I).

By way of background, the PS5613I examination was announced with a closing date of September 21, 2002 and was administered on May 17, 2003; and the PS1818I examination was announced with a closing date of January 21, 2009 and was administered on May 30, 2009.¹ Mr. Salanitro, a veteran, applied for the PS5613I examination but he was subsequently called for active military duty.² As a result, he was unable to sit for the PS5613I test. After he returned from leave, by letter dated January 25, 2010, the Department of Corrections indicated that Mr. Salanitro had submitted an application for PS1818I and requested that he be provided with a make-up for the PS1818I examination. By letter dated March 23, 2010, the Division of Selection Services requested that Mr. Salanitro submit the required application processing fee by April 6, 2010. *See N.J.A.C. 4A:4-2.17.* Subsequently, the Division of Selection Services determined that the appellant was ineligible for the PS1818I examination since he did not submit the required fee by the indicated due date. On appeal, Mr. Salanitro maintained that “under the [Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C.A. §4301, *et seq.* (USERRA),] I feel I should not have to repay for the test when it is not my fault that I could not take the test.” *N.J.A.C. 4A:4-2.17* (Application processing fees) provides that the fee that is required for *each application* for an open competitive or promotional examination is a processing fee and that it does not guarantee that an applicant will be admitted to an examination, or, if admitted, appointed to the position. Thus, it is non-refundable, except in cases of the cancellation of the examination or untimely filing of an application. Moreover, USERRA does not exempt returning service members from application processing fees. As such, the application filing fee that Mr. Salanitro submitted with his application for PS5613I was applicable only to that exam. Following further communications with Civil Service Commission staff, Mr.

¹ The resultant eligible list for PS5613I was issued on September 10, 2003 and expired on September 17, 2006. The list for PS1818I was issued on October 7, 2009 and is set to expire on October 14, 2012.

² A review of the appellant’s employment records finds that he was placed on military leave between May 31, 2002 and December 8, 2009.

Salanitro submitted the fee for the PS1818I exam, and he was administered a make-up exam for both PS5613I and PS1818I on May 5, 2011.³

By letter dated August 4, 2011, the Division of Selection Services informed Mr. Salanitro of his final average (80.500) and rank (A133) for the PS5613I exam.⁴ With respect to the make-up examination, Mr. Salanitro presented that he “asked what material I needed books and references so that I could buy them to study for the test . . . I went to the web site numerous times up to the date of the test, looking for [S]tate [C]orrection [S]ergeant orientation guide so I could find the books I need and was unable to find them[.] I feel that questions 16 through 25 and 50 through 70, I was unable to answer correctly due to not being given this material to study. I took the test anyway but fe[e]l I should be given another chance to take the test again.” As indicated in the test booklet, questions 16 through 25 measured candidates’ knowledge of interpersonal relations; questions 46 through 55 measured candidates’ report writing skills; and questions 56 through 70 measured candidates’ knowledge of supervision techniques. A review of these items found that none, with the exception of question 65, required a particular source to answer correctly. Question 65 specifically referred to Scott D. Hutton, *Staff Supervision Made Easy* (1998). However, both Mr. Salanitro and the other make-up candidate were able to answer this question correctly. Accordingly, it was determined that corrective action was not necessary. It is noted that during the course of the review, it was found that question 60 had been miskeyed to option d rather than option c. Although this issue had not been raised on appeal by Mr. Salanitro, corrective action was necessary. Thus, the Division of Selection Services rekeyed this item to option c, which Mr. Salanitro had selected. As a result, the final averages for both make-up candidates were recalculated. By letter dated February 3, 2011, Mr. Salanitro was provided with his recalculated final average (81.090) and rank (A94) for PS5613I.⁵

Subsequently, it had to be determined whether Mr. Salanitro ranked high enough on the PS5613I eligible list to be reachable for appointment.⁶ It is noted that since 1988, the responsibility for processing and disposing of open competitive certifications for the title of Correction Officer Recruit and promotional certifications for the titles of Correction Sergeant, Correction Lieutenant and Correction Captain has been delegated to the Department of Corrections. *See In the*

³ It is noted that one other make-up candidate for PS1818I took the test on that date.

⁴ By separate notice, Mr. Salanitro was provided with his final average (80.500) and rank (583) for the PS1818I exam.

⁵ He was also provided with his recalculated final average (80.930) and rank (479) for PS1818I.

⁶With respect to the PS1818I eligible list, the Department of Corrections indicates that, as of February 3, 2011, the most recent individual appointed from this list appeared at rank 149.

Matter of Department of Corrections Certifications (CSC, decided April 14, 2010). Upon contacting the Department of Corrections, MSPLR staff was informed that complete information regarding the certifications issued from the PS5613I eligible list could not be located, but that the last individual appointed from the PS5613I list appeared at rank 206. It is noted that the Department of Corrections certifies Correction Sergeant promotional lists based on location. Thus, without information regarding the certifications issued from the PS5613I eligible list, is not possible to determine at which rank appointments were made at the preferred locations indicated by Mr. Salanitro on his initial application for PS5613I.

In support of his requests, he submits additional information, including a letter dated January 20, 2012 from Senator Christopher J. Connors, Assemblyman Brian E. Rumpf and Assemblywoman DiAnne C. Gove indicating their support in this matter; and a Notification of Veterans Status dated October 7, 2011 indicating his status as disabled veteran.

CONCLUSION

N.J.A.C. 4A:4-3.4 provides that:

(a) The [Civil Service Commission] may revive an expired eligible list under the following circumstances:

1. To implement a court order, in a suit filed prior to the expiration of the list;
2. To implement an order of the [Civil Service Commission] in an appeal or proceeding instituted during the life of the list;
3. To correct an administrative error;
4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or
5. For other good cause.

See also, N.J.S.A. 11A:4-6.

Given that Mr. Salanitro may have been reachable for appointment, based on equitable considerations, it is appropriate to revive the Correction Sergeant (PS5613I), Department of Corrections, eligible list, and certify Mr. Salanitro's name at the time of the next certification for the title. It must be emphasized that the appellant does not possess a vested property interest in a position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). In this regard, USERRA does not require that Mr. Salanitro receive a permanent appointment to the Correction Sergeant title. *See In the Matter of John Fasanella*,

Docket No. A-4455-07T1 (App. Div. December 5, 2009) (USERRA is not designed to expand an appellant's employment rights on return from active military service, but only to preserve those rights he or she possessed at the time his or her active military service began, as well as those that would accrue during his or her absence).⁷

The Commission notes that if Mr. Salanitro receives an appointment to the Correction Sergeant title and successfully completes a working test period, he would then be entitled to receive a retroactive appointment date which would be calculated based on the appointment date of the next individual appointed after Mr. Salanitro's rank and be dependent on the location to which the appellant is assigned.⁸ Accordingly, Mr. Salanitro or the appointing authority should petition the Commission upon the successful completion of his working test period for a retroactive appointment date.

With respect to the make-up examination, it is noted that the Division of Selection Services is not obligated to provide a listing of source material for examinations and examination questions are not limited to specific sources. Candidates who apply for a first-level supervisory position should anticipate that there will be items that will test their knowledge of interpersonal, report writing and supervisory skills. In this regard, the job specification for the subject title indicates that a Correction Sergeant: may supervise the work operations and has responsibility for employee evaluation, and for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining employees; during a tour of duty, has a leading part in supervising the work of the institution, including the behavior of inmates and correction officers, civilian employees and visitors; is responsible for counseling Correction Officers under supervision in areas where assistance may be needed; investigates complaints made by inmates or Correction Officers and prepares reports thereof with recommendations for remedial action; and is responsible for filing reports on Correction Officers under supervision. As such, candidates for the Correction Sergeant title should prepare accordingly. As noted previously, of the items indicated by Mr. Salanitro, none, with the exception of question 65, required a specific text book to answer. Furthermore, given that the appellant has been exposed to the test content, if he were provided with a retest, he would have an unfair advantage over other candidates.

⁷ Mr. Salanitro appears to be somewhat similarly situated to the appellant in *In the Matter of John Fasanella, supra*. The court in that matter indicated that the certification should be reissued with Mr. Fasanella's name and redispensed. Given that the Department of Corrections indicates that certification records are not available for the PS5613I list, reviving the list and certifying Mr. Salanitro's name will achieve the same result and thus, provide the means for making him whole under USERRA.

⁸ It is noted that due to the lack of certification documentation, it is not possible for the Commission to calculate a retroactive appointment date without knowing the location where Mr. Salanitro would be appointed.

Regarding Mr. Salanitto's disabled veterans' status, *N.J.A.C.* 4A:5-1.3 (Filing for veterans or disabled veterans preference) provides:

- (a) Veterans' or disabled veterans' preference shall apply prospectively from the date of initial determination of the Adjutant General of the Department of Military and Veterans' Affairs or date of the Adjutant General's determination from an appeal, as the case may be. *See N.J.A.C.* 5A:9-1.4.
- (b) Veterans' or disabled veterans' preference is effective for all eligible lists for which an eligible has received a determination from the Adjutant General, as provided for in (a) above, no later than eight days prior to the list's issuance date.

It is noted that the Adjutant General's determination with respect to Mr. Salanitto's disabled veterans' status was made as of October 17, 2011. As noted previously, the list for PS5613I issued on September 10, 2003 and on October 7, 2009 for PS1818I. Thus, he cannot receive disabled veterans' status for PS5613I or PS1818I. *See In the Matter of John Fasanella, supra.* Furthermore, *N.J.A.C.* 4A:5-2.2 (Promotional examinations) provides, in pertinent part, that no distinction shall be made between disabled veterans and veterans in promotional examinations.

ORDER

Therefore, it is ordered that this request be granted in part and the Correction Sergeant (PS5613I), Department of Corrections, eligible list be revived in order for the appellant's name to be certified at the time of the next certification for Correction Sergeant, for prospective employment opportunities only. Should the appellant receive a permanent appointment to the subject title and successfully complete a working test period, he or the appointing authority should further petition the Commission for a retroactive appointment date for seniority purposes.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.